



Larry M. Weil, Planning Director
Steven Zimmer, Senior Planner
Lisa Sankey, Assistant Planner

West Fargo Planning and Zoning Commission
April 12, 2010 at 7:00 P.M.
West Fargo City Hall

Members Present: Tom McDougall
Frank Lenzmeier
Harriet Smedshammer
Edward Sheeley
Jason Gustofson
Kim Keller
Terry Potter

Others Present: Larry Weil, Lisa Sankey, Justin and Ashley Morken, Brock Storrusten, Mike Thorstad, David Wyum, Don Dabbert, Jr.,

The meeting was called to order by Chair Lenzmeier.

Commissioner Potter made a motion to approve the March 8, 2010 meeting minutes as printed and mailed. Commissioner Smedshammer seconded the motion. No opposition. Motion carried.

Chair Lenzmeier opened public hearing A10-8 Amendments to Chapters 4 (Planning & Zoning) and 11 (Animals) of the City Ordinances providing for up to four (4) chicken hens within enclosures on residential properties.

Larry reviewed the following information from the staff report:

The applicant requested that the City consider amending its ordinances to provide for chickens (not roosters) in residential areas. The request is to allow up to four (4) hens per household within an enclosure within the City. Written consent would be required from the owners of any dwelling house within twenty-five (25) feet of the enclosure. Slaughter would not be permitted within City limits. Hens are not allowed to run at large within the City, and enclosures must be kept clean.

The applicant provided some information on the benefits of urban (backyard) chickens, as well as addressed certain concerns, which is attached. Also attached is a summary of city codes from several cities which was provided by the applicant.

Urban agriculture is becoming more accepted and has been provided for in many cities across the United States. Communities have provided for urban agriculture at different levels depending on the impact to residents/businesses in the community. Vegetable and flower gardening have traditionally been more accepted in residential areas, whereas raising of farm animals, including fowl, has generally been relegated to agricultural zones on the urban fringe or to very large lot areas where there is less sensitivity to the kinds of nuisances they generate. From the information submitted, as well as a recent Zoning Practice article titled "Practice Urban Agriculture", one can see a trend where communities are allowing more farm animals within the community, particularly if the level of nuisance is minimal. Fargo, Grand Forks, Minneapolis and St. Paul allow fowl in the community with certain restrictions. Fargo and Grand Forks require written consent of the adjoining property owner/tenant if the animal enclosure is less than 75' from any dwelling house. The cities also prohibit the fowl running at large and disallow nuisances such as unpleasant odors or noise. Nuisances need to be abated within 10 days. Minneapolis and St. Paul require annual permits with fees and also have the ability to revoke the permit if necessary. They also require written consent of 75-80 percent of owners/occupants of real estate within 100-150' of the applicant's property.

The Planning Department has not received any comments at this point from the public as a result of the hearing notice in the paper; however, we have received some comments from other departments indicating concern with nuisances as a result of allowing chickens.

Currently the City provides for farm animals as a permitted use in Agricultural Districts and as a conditional use in the Rural Residential District and Rural Estate District. The applicant's request for hen chickens could be instituted under certain guidelines which would minimize nuisances. Requiring written consent only when the enclosure is within 25' of a dwelling house would seem to cause concern on the part of adjacent property owners. It might be more appropriate to use the Fargo and Grand Forks distance of 75'. Also, the accessory use of chicken hens could be accommodated within the City's provisional use procedures. Provisional uses are generally handled administratively, require notification of adjoining property owners and property owners directly across the street, and would be reviewed by the Planning and Zoning Commission if the applicant wishes to proceed after Planning Department disapproval of the application, or opposition by 25% or more of the adjoining properties. It would not be necessary to notify property owners across the street if chickens are only allowed in rear yards or interior side yards on a corner lot within enclosures and not visible from the street. Also, under the provisional use, specific conditions can be required for the use such as obtaining written consent of the adjoining owner/tenant if the enclosure is within a certain distance of the dwelling house, limiting the number of chickens, requiring confinement of the chickens within an enclosure in the rear yard so they are not free to roam and are not visible from streets, and prohibiting the slaughter of chickens.

Staff recommends following the public hearing consider the following alternatives:

1. Conditionally approve the application for chickens as an accessory use within residential districts in the City on the basis that chickens can be compatible with residential uses within certain restrictions. The conditions for approval are as follows:
 - a. No chickens shall under any circumstances be kept within an enclosure within the City at a distance less than seventy-five (75) feet from any dwelling house without the written consent of the owner or tenants of said dwelling;
 - b. No more than four (4) chickens are kept which do not create a nuisance by crowing or making other loud sounds common to its species;
 - c. The chickens are confined within an enclosure in the rear yard or interior side yard and not visible from any public right-of-way;
 - d. The slaughter of chickens is prohibited within residential districts in the City
 - e. Procedures for provisional use permits are followed.
2. Deny the request on the basis that the proposed accessory use is not compatible with residential uses within the City.

Applicant Ashley Morken stated that she and her husband Justin agree with the staff recommendations and are available to answer any questions.

There were no comments from the public. The hearing was closed.

Chair Lenzmeier asked why they wanted to have chickens. Mrs. Morken stated for the eggs. It's a trend, to be able to do this in an urban setting, use the fertilizer for the garden...

Commissioner Gustofson asked how many eggs they would produce. Mrs. Morken stated 1 a day per chicken in the summer, 1 every other day in the winter. They'll be in an insulated coop, with a heat lamp

Commissioner Gustofson asked Larry about the potential for everyone in the City being able to have 4 chickens. Larry stated that potentially based on single family district regulations; however, the governing factor would be distance. He stated that with the provisional use permit process the use is granted to the owner of the property and not to the property itself.

Larry stated that some communities allow more variety and nuisances occur when geese, ducks and other birds create noise problems. In some areas the community health officer can revoke a permit, some areas require annual permitting; however, with more rules come more administrative review. He stated that there are also areas with restrictive covenants and association issues where this wouldn't be allowed.

Commissioner Keller asked if people were notified. Larry stated that a hearing notice was published; however, individual property owners were not as this is a citywide ordinance and not a specific area.

Chair Lenzmeier asked about the existing animal ordinance. Larry stated that it's not very extensive. It involves wild animals,

reptiles. Farm animals are not allowed unless in Commercial or Industrial areas and confined to pens, are permitted in the Ag district and are conditionally permitted in the RR and R-1E districts.

Chair Lenzmeier asked if this is passed and someone is allowed to have 4 chickens and the neighbor sold the house and the new neighbor didn't like it, what could happen. Larry stated that the question would be is it a nuisance or do they not like chickens. They need to have specific issues.

Discussion was held regarding a possible permitting process, complaints and revocation.

Commissioner Keller asked the applicants if they've spoken to the neighbors. Mrs. Morken stated that they don't have any neighbors currently. Just a spec home and vacant lots. Their backyard runs along the Sheyenne River.

Commissioner Gustofson stated that this would just be for chickens. Commissioner McDougall asked how this related to the peacock nuisance in the south part of town near 40th Avenue. Larry stated that there are regulations within the City limits that if the property is zoned Agricultural certain animals are allowed. In that particular case when annexation was reviewed and required by an administrative law judge, animals were grandfathered in provided certain conditions were met.

Discussion was held regarding the definition of a complaint. Larry stated that a nuisance is defined as noise, smoke, dust, glare...

Commissioner McDougall asked about the process for approving the ordinance amendments. Larry stated the if this gets a favorable recommendation from the Planning and Zoning Commission it would go on to the City Commission who would hold a public hearing and instruct the City Attorney to provide wording for the ordinance amendments. This would involve both the zoning and animal ordinances.

Commissioner Keller asked about restrictive covenants. Mrs. Morken stated that her father-in-law is the developer and hasn't mentioned any concerns. Commissioner Keller stated that she would like them to make sure that this is not in the restrictive covenants.

Discussion was held regarding permitting vs. provisional use permits and fee structure. Chair Lenzmeier stated that in all the examples the health officer is mentioned. Larry stated ideally to have the ability to review without bogging down the process.

Mr. Morken stated that in terms of level of nuisance, their research indicates 4 chickens create less output than a dog in terms of manure.

Commissioner Sheeley made a motion for approval subject to conditions 1, a-e listed in the staff report with an additional condition that the ability to permit is established as the City Commission feel appropriate. Commissioner McDougall seconded the motion. No opposition. Motion carried.

Then next item on the agenda was Detailed Development Plans – A10-6 Shadow Wood 4th Addition, a replat and rezoning from R-1B: Special Single Family Dwellings to PUD: Planned Unit Development Lots 20 & 21, Block 2 and Lot 1, Block 3 of Shadow Wood 2nd, City of West Fargo, North Dakota.

Larry stated that since the Planning and Zoning Commission meeting the City Commission has held a public hearing on the rezoning part of the request and has given the first reading for approval with the understanding that the second reading and final plat approval would not be considered until Detailed Development Plans have been approved by the Planning and Zoning Commission.

An Attorney Title Opinion has been submitted for the property included within the application. Also, a revised Area Plan and Preliminary Plat have been submitted. The private cul-de-sac areas have been platted as lots to show their private nature and to help facilitate describing the area where the association would have common maintenance requirements. Some adjustments to lots have been made on the revised Preliminary Plat which also have been reflected on the site plan. The developer requested the City Engineer to establish a sewer and water improvement district; however, have asked the City Commission to delay action until some things can be worked out.

If there are additional changes, they should be reflected on the plans and submitted prior to Planning and Zoning Commission

consideration. Also, the City will need a drainage plan, certificate showing taxes are current, landscape plan for the development, an outline for the anticipated schedule and sequence of construction for all improvements for the PUD, and a developer's agreement.

Larry stated that on the previously submitted site plan, all the units had a minimum 5' setback. Setbacks for Lots 1 & 3, Block 2 need to be clarified.

Discussion was held regarding the private streets. Larry stated that the lots would not be buildable if a public street was required.

Applicant Don Dabbert, Jr. indicated he was available to answer questions.

Commissioner Gustofson made a motion for approval. Commissioner Potter seconded the motion. No opposition. Motion carried.

The next item, A10-4 Stockyard's Corner 5th Addition, a replat of Lots 6 & 7, Block 1 of Stockyard's Corner 3rd Addition, City of West Fargo, North Dakota, has been continued at the developer's request.

Larry stated that since the last meeting, information was received from the ND-DOT on access issues. The developer would like time to take a look at options. What was proposed would impact his property or the property to the east.

Commissioner Smedshammer made a motion to continue this item for another 30 days. Commissioner Keller seconded the motion. No opposition. Motion carried.

The next item on the agenda was A10-9 Sheyenne Diversion, Sheyenne Street Bicycle & Pedestrian Study.

Larry stated that the Fargo Moorhead Metropolitan Council of Governments has undertaken a pedestrian/bikeway study for the Sheyenne Diversion and Sheyenne Street area with the cooperation from Cass County and the Cities of Horace and West Fargo. The Sheyenne Diversion has the potential to offer a number of opportunities for various recreational activities including biking, walking and cross-country skiing. The Sheyenne Street corridor also provides for opportunity to develop pedestrian/bikeways and to link into facilities that are being developed on the Veteran's Boulevard area. To better understand and allow for the potential development of these amenities with linkages across jurisdictional boundaries, all the jurisdictions were involved through the study process.

The study looked at the corridor between 12th Avenue North and Horace and divided the area into three segments for the purpose of identifying the types of pedestrian/bikeway and/or recreational opportunities in addition to the timing or phasing of the facilities.

The study is intended to be a foundational document for bicycle and pedestrian planning efforts for the cities of Horace and West Fargo, as well as Cass County. Coordination between these jurisdictions will be essential for the continued systematic development of the bicycle and pedestrian system. Improvements are recommended along the Sheyenne Diversion, 9th Street West south of 40th Avenue West, Sheyenne Street (Cass County Hwy 17), and in the I-94/Sheyenne Street Interchange area.

Larry reviewed the maps including land use, traffic volumes, existing bikeway systems, programmed long range projects.

Staff recommends approval of the study by resolution.

Discussion was held regarding the 40th Avenue bikeway proposed this summer.

Commissioner Smedshammer made a motion for approval. Commissioner McDougall seconded the motion. No opposition. Motion carried.

Under non-agenda, Don Dabbert, Jr. asked the Planning and Zoning Commission about a possible zoning classification for smaller lots. With market conditions, he feels it's worthwhile for a different zoning classification. He indicated houses are getting smaller.

Discussion was held regarding the R-1S and R-1B zoning classifications which allowed decreased setbacks, street standards and accentuating the structures rather than garages.

Larry stated that PUD's are typically for unique development patterns. Eaglewood wanted to mix larger lots. When the R-1S zoning district was established a few years ago, 40' wide single family lots was as low as the commissions felt comfortable with.

Mr. Dabbert stated that more people are getting away from twin homes and prefer smaller homes, so they either need to use the PUD zoning or build a smaller home on a larger lot. Rather than using the PUD zoning as was used in the Eaglewood Addition, a zoning classification similar to Fargo's SR-5 might be appropriate.

Discussion was held regarding PUDs and the review process.

Larry stated that staff is working on a number of zoning ordinance amendments and hopes to have some conceptual drafts available at the next meeting.

Also under non-agenda, Chair Lenzmeier stated that he couldn't read the signature on the Morken's application and suggested adding a print name line to the applications.

Commission Gustofson made a motion to adjourn. Commissioner Keller seconded the motion. No opposition. Meeting adjourned.